

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re: U.S. Application No. 09/844,511 filed April 28, 2001

Title: "Scalable, Multi-User Server And Method For Rendering Images From Interactively Customizable Scene Information"

Inventors: Thomas Driemeyer and Rolf Herken

Attorney Reference: MENT-059

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DECLARATION OF ULRICH HERKEN

United States Patent and Trademark Office  
Commissioner for Patents  
Alexandria, VA 22314

Dear Sir or Madam:

1. I am Ulrich Herken, M.D., PhD. I am currently Chief Science Officer, Perfusion Technology, LLC, Medford, Massachusetts.
2. On 22 June 2005 my cousin, Mr. Rolf Herken, President and Chief Executive Officer of Mental Images GmbH, called me and indicated that he was extremely concerned about a situation involving his, and his company's, U.S. patent attorney, Mr. Richard Jordan, who had not returned telephone, email or other messages for several months.

3. Because my cousin Rolf is located in Berlin, Germany, he asked me to visit Mr. Jordan's home office in Wellesley, Massachusetts, to see if I could contact Mr. Jordan. In particular, my cousin Rolf briefed me with regard to his concern about Mr. Jordan's failure to contact him or return messages since his presumptive return from vacation at the beginning of May.

4. I did visit Mr. Jordan on 23 June 2005, and described that visit to my cousin in an email dated 23 June 2005 (German and English versions attached hereto as Exhibits A and B, respectively), and in further detail in a telephone call the next day. The visit transpired as follows:

5. I arrived at Mr. Jordan's house at approximately 5:00 pm on 23 June 2005 and rang the doorbell, but did not immediately receive a response. I went to speak with Mr. Jordan's neighbor, who told me that Mr. Jordan still lived there and was actually at home. A few minutes later, as I was about to leave, the door to Mr. Jordan's home opened, and someone stepped out to retrieve the newspaper and mail. I approached, identified myself as a cousin of Rolf Herken, and asked if the individual was Mr. Jordan. The individual, dressed in pajamas, unshaven and initially confused, indicated that he was. When I asked why he had not returned messages or otherwise been in communication for almost three months, Mr. Jordan indicated that he had been suffering from a reaction to some medication, but was now feeling better. He indicated that he greatly enjoyed working on the Mental Images patent applications and would soon be sending more work-product.

6. As the conversation proceeded, however, I began to sense that the individual was not in complete command of his faculties. Mr. Jordan spoke of things he had accomplished for Mental Images. He also said that he would send to Rolf the missing information he had promised (i.e. a status chart) on the same day by fax. He seemed to be confused about when he had done certain things in the past.

7. I left that meeting concerned that Mr. Jordan was no longer competent to handle my cousin's (or his company's) patent work.

I HEREBY DECLARE that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: July 28, 2005



By: Dr. Ulrich Herken  
Medford, Massachusetts

EXHIBIT A

> ----- Original Message -----

> From: "Ulrich R Herken" <urh@herken.org>

> To: "'Rolf Herken'" <rolf@mental.com>

> Sent: Friday, June 24, 2005 04:17

> Subject: Rick Jordan

>

>

>>

>> Lieber Rolf,

>>

>> das war nun kein Problem fuer mich, wird aber wahrscheinlich

>> eins fuer Dich...

>>

>> Bin heute bei Jordan vorbeigefahren. Habe 2x geklingelt - nix.

>> Auto vor der Tuer, Aussenbeleuchtung und innen Lampen an.

>> Mit dem Nachbarn geredet, der gerade seinen Rasen maehte. Der sagte

>> mir das Jordan eigentlich da sei. Nach seiner Aussage wohnt wohl auch

>>

>>

>>

>> Als ich dann endlich wieder abfahren wollte sah ich, dass die Haustuer

>> aufging und jemand die Zeitung und Post reinholte. Dies war um 17 Uhr...

>> Habe Hallo gerufen und ihn abgefangen bevor er die Tuer wieder zumachen

>> konnte. Vom ersten Eindruck wuerde ich sagen, mein Klingeln hat ihn

>> geweckt: unrasiert, verwirrt, im Schlafanzug.

>>

>> Habe ihm Dein Leid geklagt. Er war der Meinung, dass er Euch doch vor

>> kurzem ein Fax geschickt haette wegen der letzten "office action" des

>> Patentamtes. Einer der wichtigsten Antraege, meinte er, und es saehe so

>> aus, als wenn er mit nur geringen Aenderungen durchgehen wuerde...?

>> Versprach mir, noch heute das Fax noch einmal zu schicken.

>>

>> Taute zunehmend auf und wurde waehrend des Gespraechs auch etwas

>> kohaerenter.

>> Erzaehlte etwas davon, dass er wegen eines "Hautproblems" laengere Zeit

>> Cortison genommen haette und ihm das garnicht bekommen waere. Er waere

>> Nachmittags einfach umgekippt, und so. Aber seit Mitte Mai wuerde er es

>> nicht mehr nehmen und es wuerde ihm jetzt zunehmend besser gehen. Etc.

>> pp.

>> Er wuerde jetzt bis Ende des Monats das Projekt fuer Euch zu Ende

>> bringen,

>> und es wuerde ihm solchen Spass machen, mit Euch zu arbeiten weil die

>> Thematik so interessant waere, u.s.w.

>>

>> Wenn Du jetzt wieder nichts von ihm hoerst (oder eigentlich auch wenn Du

>> von ihm hoeren solltest) bleibt Dir, fuerchte ich, nichts anderes

uebrig,

>> als Euren andern Patentanwalt dort vorbeizuschicken um die Unterlagen zu

>> sichten und die Basisverantwortung zu uebernehmen. Jordan

>> alleinverantwortlich

>> weitermachen zu lassen ist m.E. ein Risiko, dass die Firma nicht

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eingehen  
>> sollte.  
>>  
>> Es ist schwierig, diese Begegnung zu beschreiben. Wenn Du willst,  
koennen  
>> wir  
>> auch nochmal telefonieren. Sag mir wann und wo ich Dich anrufen soll,  
>> und  
>> ich melde mich bei Dir. Hatte schon ueberlegt Dich heute nach dem  
Treffen  
>> anzurufen, war aber schon nach Mitternacht.  
>>  
>> Herzliche Gruesse,  
>>  
>> Uli  
>>  
>> --  
>> Ulrich R. Herken (urh@herken.org)

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EXHIBIT B

Rolf Herken <rolf@mental.com>

07/14/2005 02:48 PM

To: david.jacobs@gesmer.com  
cc: peter.moldave@gesmer.com, silvia@mental.com,  
sunshine.limanni@gesmer.com  
Subject: Re: Fw: Rick Jordan

David,

the translation is included herebelow.

Kind regards,

Rolf

-----  
Letter from Dr. Ulrich Herken to Rolf Herken  
(sent June 23 (EST) / June 24 (CET))  
-----

Dear Rolf,

This was not a problem for me, but most likely it will  
be one for you ...

I went to Mr. Jordan's house today. I rang twice, no response.  
A car was parked in front of the house. External lights and lights  
inside the house were on. I talked to Mr. Jordan's neighbor who was  
mowing his lawn. He said that he thought that Mr. Jordan was at home.

When I was finally about to leave, I saw that the front door  
to Mr. Jordan's house was opened and someone was picking up  
the newspaper and the mail. Mind you, it was 5 p.m. ...  
I called out to the person and wanted to catch him before he  
shut the door. My first impression was that I had woken him  
up: unshaved, confused, wearing pajamas.

I spoke to him and told him about your woes. In his opinion, he had  
recently sent you a fax pertaining to the last "office action"  
of the Patent Office. One of the most important applications,  
as he said, and it would look as if it would pass with only  
minor changes. He promised me to resend the fax today.

While we were talking, he became more and more open and more coherent. He said that because of a "dermatological problem" he had taken cortisone over an extended period of time which had not agreed with him at all. It had made him faint in the afternoon, and so on. But since mid-May he had stopped taking it and was feeling better and better, etc. pp. He would now finish the project for you until the end of the month, and he was enjoying working for you so much because the subject matter was so interesting, and so on.

Should you again not hear from him (but, actually, even in case you should), I am afraid you can only send your other patent attorney to Mr. Jordan and have him look through the documents and to take over the general responsibility for your matters. In my opinion, leaving the responsibility for these matters solely with Mr. Jordan would be a risk that the company should not take.

It is difficult to really describe my meeting with Mr. Jordan. If you wish, we can speak on the telephone about it. Let me know when you want to take my call. I thought I'd call you right after the meeting, but it was already after midnight.

Kind regards,

Ulrich R. Herken (urh@herken.org)

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